

The Settlement of Business Disputes between China and Arab Gulf States: Where to Go?

Weidong ZHU *, Ting WANG **

* Chinese Academy of Social Sciences, ** Beijing Foreign Studies University
Email: zwd94@sina.com

Abstract:

With the increase of the civil and commercial transactions between China and Arabia Gulf countries in recent years, the business disputes between both sides increase as well. China and Arab countries have paid much attention to the efficient and fair settlement of such disputes to maintain a long-term sustainable development of business relations. The author first examines the current investment and trade disputes between both sides and the existing legal framework for settling such disputes, eg, litigation, mediation, arbitration, etc. Then the author proposes that the business disputes between China and Arab Gulf countries should be settled through amicable means such as mediation and arbitration. In case of dispute, the parties involved had better settle their disputes through mediation with the help of the mediation institutions from both sides. If the mediation fails, the parties may submit their disputes to arbitration instead of litigation, considering the difficulties in litigation and the convenience through arbitration. When the parties choose to arbitrate their disputes in the Arab Gulf countries, they'd better choose to arbitrate in the prestigious arbitral institutions in the region, also taking into account other elements such as whether the country in which the arbitration takes place adopted the UNCITRAL Model Law on International Commercial Arbitration or not and whether it ratified the New York Convention or not.

Key Words: The Belt and Road Initiative, China, Arab, Business, Settlement of Dispute

* ZHU Weidong, Professor and Director of the Center for African Laws, Chinese Academy of Social Sciences.

** WANG Ting, Lecturer at Beijing Foreign Studies University, School of African Studies.

1. INTRODUCTION

Arab countries are mainly distributed in the region of West Asia and North Africa, including 12 countries from West Asia, such as Jordan, Syria, Saudi Arabia, Yemen, Kuwait, the United Arab Emirates (the UAE) and so on, and 10 African countries from North Africa, such as Morocco, Algeria, Tunisia, Sudan and so on. This region is often referred to as the Middle East and North Africa (MENA). The Arab Gulf countries mainly refer to a number of Arab countries located along the Persian Gulf coast, including seven countries, namely, Iraq, Kuwait, Saudi Arabia, Bahrain, Qatar, UAE, and Oman. Except Iraq, the rest are all members of the Gulf Cooperation Council (GCC).¹ Arab countries, occupying important geographical location, form essential channels and corridors which connect Asia and Europe, Africa together. Especially most of the Arab Gulf countries are important connecting points along the Belt and the Road. China and Arab countries have a long history of exchange. The Arab Gulf countries, in recent years, have actively responded to the Belt and Road Initiatives (the BRI) proposed by China, strengthening industrial capacity cooperation with China and actively joining the Asian Infrastructure Investment Bank (the AIIB). For example, according to Declaration of Action on the Belt and Road Cooperation between China and Arab Countries released on July 10, 2018, five Arab Gulf countries including Saudi Arabia, Kuwait, Oman, Qatar, Iraq, have signed the BRI cooperation documents with China, and two Arab Gulf countries, namely Saudi Arabia, UAE, have signed documents of industrial capacity cooperation with China. Six Arab Gulf countries, namely, UAE, Saudi Arabia, Jordan, Oman, Qatar, and Kuwait are all founding members of the AIIB.²

The economies of China and the Arab Gulf countries are highly complementary. Driven by China-Arab States Cooperation Forum, China and the Arab countries have made fruitful achievements in the fields of business and investment. In 2017, the trade volume between China and the Arab countries has reached nearly US\$200 billion and China's direct investment flow to the Arab countries has reached US\$1.26 billion, of which a large proportion is between China and the Arab Gulf Countries. China is currently the second largest trading partner of the GCC countries and the most important oil export destination, while the GCC countries are the seventh largest trading partner of China and the largest construction contracting market for China.³

According to the data of China's trade and investment with the Arab Gulf countries in the first half of 2017, released by the Chinese Customs, the Arab Gulf countries which has the largest trade volume with China during this period are ranked as the following: Saudi Arabia (US\$25.396 million), UAE (US\$20.254 million), Iraq (US\$10.967 million), Oman (US\$8.324

¹See the website of the GCC, <http://www.gcc-sg.org/en-us/Pages/default.aspx>.

²This declaration is available at the official website of the China-Arab States Cooperation Forum, <http://www.chinaarabcf.org/chn/zagx/gjydy/t1577010.htm>.

³"China and GCC Countries strive to reach a free trade agreement", <http://finance.jrj.com.cn/2016/12/19141021856317.shtml>.

billion), Kuwait (US\$54.71 billion) and Qatar (US\$3.304 billion); and China's non-financial investment to the Arab Gulf countries are ranked as the following: UAE (US\$280 million), Saudi Arabia (US\$43 million), Kuwait (US\$9 million), Oman and Iraq (US\$2 million, respectively).⁴

There are a lot of disputes over business between both sides. These disputes, if not properly resolved, will affect the flow of goods, capital, services and persons. This paper will first analyze the status quo of business and investment disputes between China and the Arab Gulf countries, and then will examine the existing legal framework to regulate such disputes in the Arab Gulf countries, and finally the author will put forward some relevant suggestions on how to resolve those disputes between both sides based on the analysis of the existing disputes settlement mechanisms in the Arab Gulf countries.

2. THE STATUS QUO OF BUSINESS DISPUTES BETWEEN CHINA AND THE ARAB GULF COUNTRIES

For the convenience of analysis, the business disputes referred to in this paper do not include trade and investment disputes between countries. Rather it only refers to the commercial disputes between the equal civil and commercial subjects, for example, those disputes between and among the companies, business entities and the natural persons, and the investment disputes between foreign investors and the host states.

In terms of the commercial disputes, with the frequent exchanges between China and Arab countries in recent years, the number of commercial disputes between the parties from both sides has been on the increase concerning the product quality, payment methods and so on. A deputy director of the Commercial Legal Service Center of China Council for the Promotion of International Trade (CCPIT) once pointed out that since 2013 the Center has dealt with over 150 commercial disputes involving the Arab countries, the amount of which is nearly RMB2 billion yuan.⁵ The status quo and features of the commercial disputes between China and Arab counties can also be manifested from the the civil and commercial cases accepted by the Chinese courts involving the parties from the Arab Gulf countries. Therefore, the author selected several Arab Gulf countries which have more frequent business and investment exchanges with China to make such an analysis. Those countries include Saudi Arabia, UAE, Kuwait and Iraq. As of 25 June, 2020, from the ITSLAW, an important search engine for the Chinese judgments, the author has searched 1321 civil and commercial judgments involving the UAE factors⁶ in Chinese Courts since 2009 and the top three catagories of the judgments concerning the contract, voluntary service and unjust enrichment (606 cases), intellectual

⁴⁴See the website:<https://www.casetf.org/xwzx1/1617.html>.

⁵See the website:http://www.xinhuanet.com/fortune/2015-09/10/c_1116527084.htm.

⁶The UAE factors means that the one of the parties of the judgments is from the UAE, or the subject matter of the disputes locates in the UAE, or the legal facts that resulted in the disputes locate in the UAE, for example, the contract is concluded or performed in the UAE.

property and competition (121 cases), and marriage and family succession (52 cases), respectively;⁷The number of the civil and commercial judgments involving the Saudi Arab factors is 639, and the top three are those concerning the contract, voluntary service and unjust enrichment disputes (212 cases), maritime and admiralty disputes (64 cases) and intellectual property and competition disputes (61 cases), respectively;⁸ The number of the civil and commercial judgments involving the Kuwait factors is 291, and the top three concerning the contract, voluntary service and unjust enrichment disputes (105 cases), intellectual property and competition disputes (45 cases), maritime and admiralty disputes (13 cases), respectively;⁹ and the number of the civil and commercial judgments involving the Iraqi factors is 467 and the top three are contract, voluntary service and unjust enrichment disputes (190 cases), intellectual property and competition disputes (51 cases), and Marriage and family succession disputes (16 cases), respectively.¹⁰

From the above cases, it is obvious that the civil and commercial disputes between China and the Arab Gulf countries are mainly contractual disputes, most of which are those relating to the international sales of goods. This may be attributed to the following three facts: firstly, the parties from both sides do not have enough knowledge about the credit of each other and conclude the contract randomly, which is prone to the breach of the contract later; secondly, the contract is concluded not in strict compliance with the relevant laws or the business transaction is carried out without any contracts at all and in such a circumstance, the dispute is most likely to arise; and thirdly, there is a short of the effective disputes settlement mechanisms, thus the disputes cannot be resolved in time. In addition, as can be seen from the annual distribution of the number of cases involving the four Arab Gulf countries accepted by the Chinese Courts, the number of the cases has increased significantly since 2013. It illustrates that since the BRI was

⁷<https://www.itslaw.com/search?initialization=%7B%22category%22%3A%22CASE%22%2C%22filterList%22%3A%5B%7B%22type%22%3A%22searchWord%22%2C%22category%22%3A%22E6%90%9C%E7%B4%A2%E8%AF%8D%22%2C%22value%22%3A%22E9%98%BF%E8%81%94%E9%85%8B%22%2C%22searchType%22%3A1%2C%22label%22%3A%22E9%98%BF%E8%81%94%E9%85%8B%22%2C%22id%22%3A%22E9%98%BF%E8%81%94%E9%85%8B%22%7D%5D%7D.>

⁸<https://www.itslaw.com/search?initialization=%7B%22category%22%3A%22CASE%22%2C%22filterList%22%3A%5B%7B%22type%22%3A%22searchWord%22%2C%22category%22%3A%22E6%90%9C%E7%B4%A2%E8%AF%8D%22%2C%22value%22%3A%22E6%B2%99%E7%89%B9%E9%98%BF%E6%8B%89%E4%BC%AF%22%2C%22searchType%22%3A1%2C%22label%22%3A%22E6%B2%99%E7%89%B9%E9%98%BF%E6%8B%89%E4%BC%AF%22%2C%22id%22%3A%22E6%B2%99%E7%89%B9%E9%98%BF%E6%8B%89%E4%BC%AF%22%7D%5D%7D.>

⁹<https://www.itslaw.com/search?initialization=%7B%22category%22%3A%22CASE%22%2C%22filterList%22%3A%5B%7B%22type%22%3A%22searchWord%22%2C%22category%22%3A%22E6%90%9C%E7%B4%A2%E8%AF%8D%22%2C%22value%22%3A%22E7%A7%91%E5%A8%81%E7%89%B9%22%2C%22searchType%22%3A1%2C%22label%22%3A%22E7%A7%91%E5%A8%81%E7%89%B9%22%2C%22id%22%3A%22E7%A7%91%E5%A8%81%E7%89%B9%22%7D%5D%7D.>

¹⁰<https://www.itslaw.com/search?initialization=%7B%22category%22%3A%22CASE%22%2C%22filterList%22%3A%5B%7B%22type%22%3A%22searchWord%22%2C%22category%22%3A%22E6%90%9C%E7%B4%A2%E8%AF%8D%22%2C%22value%22%3A%22E4%BC%8A%E6%8B%89%E5%85%8B%22%2C%22searchType%22%3A1%2C%22label%22%3A%22E4%BC%8A%E6%8B%89%E5%85%8B%22%2C%22id%22%3A%22E4%BC%8A%E6%8B%89%E5%85%8B%22%7D%5D%7D.>

proposed in 2013, the business disputes between China and Arab countries have increased with the development of trade and investment between both sides. Therefore, it is necessary that China and the Arab Gulf countries pay attention to this situation in a timely manner and actively seek solutions to resolve such business disputes to enhance the development of the BRI.

As regards the investment disputes between China and the Arab Gulf countries, such disputes are more likely to occur due to the political instability, the frequent terrorist activities and the unsound legal systems in the Arab region. Indeed, investment disputes caused by the political instability in the region have become commonplace. After the Arab Spring, for example, a lot of investment disputes in this region have come up. In the period commencing about a year after the beginning of the Arab uprisings (July 1st, 2013 to June 30th, 2014), 15% of the new cases filed in the International Center for the Settlement of Investment Disputes (ICSID) involved Arab states. Many announced that the marked increase was due to the hostility of the new Arab governments to the respect of the previously concluded agreements with non-Arab actors. In particular, four requests for arbitration were brought against the Egyptian government at ICSID in the nine months following the Egyptian uprisings, compared with only two in the previous five years.¹¹ So far, except Bahrain, the other six Arab Gulf countries have all been brought to the ICSID by the foreign investors and the number of the claims is ranked as the following: Saudi Arabia (4), the UAE and Oman (3 respectively), Kuwait (2), and Qatar (1).¹²

Such factors as the political instability in Arab region also exert a great impact on China's investment in this region. For example, more than 70 Chinese enterprises were affected by the war in Libya in 2011, involving more than 50 contracted projects worth up to US\$19 billion. Such instance can also be seen in Yemen where military forces have attacked Sana international airport terminal project contracted by Beijing Urban Construction Group Co.Ltd. Finally, the project was forced to terminate. Beijing Urban Construction Group Co.Ltd filed a complaint against the Yemeni government at ICSID in December 2014 for damages of the project.¹³ China's investment in Arab countries mainly focuses on energy, infrastructure construction and other fields, which are the most likely to generate investment disputes between foreign investors and Arab governments. Therefore, more investment disputes between Chinese investors and Arab governments will occur in the future. This also requires the Chinese investors to understand investment disputes settlement mechanisms in Arab countries, so as to safeguard their rights when disputes occur.

¹¹Cherine Foty, "The Evolution of Arbitration in the Arab World, Kluwer Arbitration Blog", July 1, 2015, available at <http://arbitrationblog.kluwerarbitration.com/2015/07/01/the-evolution-of-arbitration-in-the-arab-world/>.

¹²The data is collected from the website of the ICSID, <https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx>.

¹³The information of the case may be found at the website of the ICSID, <https://icsid.worldbank.org/en/Pages/cases/casedetail.aspx?CaseNo=ARB/14/30>.

3. THE EXISTING SETTLEMENT MECHANISMS FOR COMMERCIAL AND INVESTMENT DISPUTES IN THE ARAB GULF COUNTRIES

The ways to settle the commercial and investment disputes include negotiation, consultation, conciliation, mediation, arbitration and litigation. Because negotiation, consultation and conciliation are relatively flexible and informal disputes settlement methods, and will not reach binding decisions among the parties involved, this paper will only analyze such dispute settlement mechanisms as litigation, arbitration and mediation in the Arab Gulf countries.

3.1 litigation

All the Arab Gulf countries belong to the civil law system that relies heavily on the codified civil or commercial procedural laws,¹⁴ which will generally provide for the jurisdiction of the courts, the choice of laws, the recognition and enforcement of foreign judgments and arbitral awards. A knowledge of these legal provisions is required if litigation is to take place in the courts of the Arab Gulf states. For example, Article 235 of the Code of Civil Procedure of the UAE specifically provides for the recognition and enforcement of foreign judgments which applies de facto in the absence of a bilateral or multilateral treaty or convention on such a matter.¹⁵ In order to improve the settlement mechanisms of international civil and commercial disputes, some Arab Gulf countries have formulated special legislation in some particular areas in the international civil and commercial litigation. For example, Saudi Arabia enacted a special Enforcement Law in 2013, creating specialized enforcement courts for the purpose of enforcing “executory instruments” such as court judgments and arbitral awards (including foreign court judgments and arbitral awards), cheques and promissory notes.¹⁶

The recognition and enforcement of judgments is of great importance in international civil and commercial litigation. If the judgments are not recognized and enforced, it is like a piece of useless paper. Although most Arab Gulf countries have provided for the recognition and enforcement of foreign judgments in their domestic laws, it does not go very well due to the influence of Islamic law in Arab Gulf countries.¹⁷ To this end, some Arab Gulf states have made arrangements for the mutual recognition and enforcement of judgments through bilateral treaties on judicial assistance in civil and commercial matters with other states. In absence of such bilateral treaties, only when there is the reciprocity of treatment, will the courts in the

¹⁴Anura Jagodage, “Dispute Resolution Mechanisms Available in the United Arab Emirates and Other Middle Eastern Countries”, *SLQS Journal*, July (2000), 6-12.

¹⁵Celine Kanakri and Sally Kotb, “Choice of Law and Dispute Resolution in the United Arab Emirates”, available at <https://globalarbitrationnews.com/choice-of-law-and-dispute-resolution-in-the-united-arab-emirates/>.

¹⁶Marwan Elaraby, et al, “Enforcement of Foreign Judgments and Arbitral Awards in the Kingdom of Saudi Arabia”, available at <http://www.mondaq.com/saudi-arabia/x/532728/Arbitration+Dispute+Resolution/Enforcement+Of+Foreign+Judgments+And+Arbitral+Awards+In+The+Kingdom+Of+Saudi+Arabia>.

¹⁷Nicolas Bremer, “Seeking Recognition of Foreign Court Judgments and Arbitral Awards in the GCC Countries”, *McGill Journal of Dispute Resolution*, (2016-2017), 41-56.

Arab Gulf states recognize and enforce the foreign judgments.¹⁸ However, there are not so many such bilateral treaties concluded between the Arab Gulf countries and other countries, and only few countries have established reciprocal relations in the recognition and enforcement of judgments with the Arab Gulf countries. For example, the UAE has only concluded bilateral civil and commercial judicial assistance treaties with Tunisia, France, India, Egypt, China and Kazakhstan;¹⁹ and Kuwait and Qatar have only established reciprocal relations with Germany and the United States in the recognition and enforcement of judgments by practice.²⁰

Arab states attach great importance to the judicial cooperation including the recognition and enforcement of judgments as well as the service of judicial documents among themselves in international civil and commercial litigation. In 1952, for example, Egypt, Iraq, Jordan, Kuwait, Libya, Syria and the UAE, as members of the League of Arab States, ratified the Convention of the Arab League on the Enforcement of Judgments and Arbitral Awards of 1952 which made stipulations on the enforcement of judgments and arbitral awards among the member countries; In April, 1983, some Arab counties, namely, Jordan, Bahrain, Tunisia, Algeria, Djibouti, Somalia, Iraq, Saudi Arabia, Sudan, Syria, Oman, Palestinian, Qatar, Kuwait, Lebanon, Libya, Morocco, Mauritania and Yemen, signed the Convention on Judicial Cooperation between States of the Arab League in Riyadh and it was ratified on 11 May 2000, which deals with the recognition and enforcement of foreign judgments and arbitral awards without reviewing the merits of the underlying disputes, provided that such judgments or arbitral awards do not violate public order, morality or the Constitution of the States in which the enforcement is being sought, or the overriding principles of Shariah law; In 1996, several GCC member states, including the UAE, Bahrain, Saudi Arabia, Oman, Qatar and Kuwait, signed the GCC convention on Execution of Judgments, Delegations and Judicial Notification, which provided for the reciprocal recognition and enforcement of inter-states judgments.²¹

International cooperation is also essential in international civil and commercial litigation other than the bilateral and regional arrangements. There are two very important international conventions in the international civil and commercial litigation, namely, the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 (hereinafter referred to as the Hague Service Convention) and the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 1970 (hereinafter referred to as the Hague Evidence Convention). So far, of the 22 Arab states, only three countries, namely Kuwait, Morocco and Egypt, have acceded to the Hague Service Convention;²² Only two

¹⁸See generally, Nicolas Bremer, *op.cit.*, pp.38-65.

¹⁹DIFC Courts Enforcement Guide (4 edition), available at <https://www.difccourts.ae/wp-content/uploads/2018/01/ENFORCEMENT-GUIDE-2016-AW.pdf>.

²⁰See generally Nicolas Bremer, *op.cit.*, p.49 and pp.54-55, respectively.

²¹The convention can be found at http://www.arbitrationlaw.com/files/free_pdfs/GCC%20Convention.pdf.

²²See the website:<https://www.hcch.net/en/instruments/conventions/status-table/?cid=17>.

countries, Kuwait and Morocco, have acceded to the Hague Evidence Convention.²³ Of the seven Arab Gulf states, only Kuwait has acceded to the two conventions. This is clearly not conducive to the development of civil and commercial litigation between the Arab Gulf states and other countries.

In order to improve legal environment, attract foreign investment and provide convenient civil and commercial litigation settlement mechanisms for parties involved, some Arab Gulf countries have also set up specialized international commercial courts. For example, Dubai, the second largest Emirate of the UAE, has established the Dubai International Financial Center Courts (DIFC Courts) through legislation in 2004 in order to provide fast and efficient civil and commercial disputes settlement services to companies incorporated in the Dubai international financial center. The courts now accept civil and commercial disputes not only between the parties in the Dubai financial center, but also those from other regions or countries that the parties have agreed in writing to submit to the courts.²⁴ In 2015, the Abu Dhabi Global Market Courts (ADGM Courts) was established in the Abu Dhabi international financial center.²⁵ Qatar also adopted a legislation in 2009 to set up the Qatar International Court and the Dispute Resolution Center (QICDRC) to hear civil and commercial disputes between parties from different countries within the Qatar financial center. These specially established international commercial courts provide very convenient conditions for parties involved from different countries to settle civil and commercial disputes. For example, in some of the specialized courts the judges come from different countries and have different legal backgrounds, and the common law is applied. Even English can be used in the court hearings in some of the courts. The DIFC Courts have also concluded cooperation memoranda with 12 courts from different countries to facilitate recognition and enforcement of their judgments.²⁶

As can be summarized from the above analysis, the judicial cooperation especially in the recognition and enforcement of foreign judgments among the Arab Gulf states is more favorable than the judicial cooperation between the Arab Gulf states and the other countries. Taking into account the complexity of the Arab countries' legal systems and the difficulties in the recognizing and enforcing foreign judgments, it is not recommended to settle the commercial and investment disputes through litigation in the Arab countries.

3.2 Arbitration and mediation

The idea of arbitration and mediation is deeply rooted in the history of Arab and Islam.²⁷ From the 1980s, some Arab countries began to enact arbitration laws based on the UNCITRAL

²³See the website: <https://www.hcch.net/en/instruments/conventions/status-table/?cid=82>.

²⁴For a general introduction of the courts, please visit the website <https://www.difccourts.ae/>.

²⁵See the website: <https://www.adgm.com/doing-business/adgm-courts/home/>.

²⁶See the website: <https://www.difccourts.ae/courts-programmes/protocols-and-memorandums-of-understanding/>.

²⁷Nasser Ali Khasawneh, Vicky Sfeir, "Arbitration and Mediation in the Arab World: A Growing Phenomenon", available at <https://www.mediate.com/articles/AliKhasawnehN1.cfm>; Cherine Foty, The Evolution of Arbitration

Model Law on International Commercial Arbitration (hereinafter referred to as the model law). So far, seven Arab countries have adopted the model law, namely, Jordan, Saudi Arabia, Qatar, Bahrain, Oman, Tunisia and Egypt, four of which are the Arab Gulf states.²⁸ Compared with arbitration, one of the main advantages of mediation is that it is far less costly than arbitration. Thus mediation is also encouraged as a dispute resolution in some Arab countries. For example, the Law on Mediation for the Resolution of Civil Disputes was adopted in Jordan in 2006 which organizes the process of judicial mediation that takes place at the Court of the First Instance. A Mediation Center was also established by virtue of Dubai's Law No. 16 of 2009 in the Emirate of Dubai in the UAE. Such a development of mediation in Arab states "is likely to lead to a surge in the use of mediation as a method for the amicable resolution of disputes".²⁹

In order to facilitate the recognition and enforcement of arbitral awards, a number of Arab states acceded to the New York Convention shortly after its adoption in 1958. For example, Egypt, Syria and Morocco all have acceded to the convention in 1959. Currently, all Arab Gulf countries, except Iraq, are members of the convention.³⁰ This creates a very convenient condition for the recognition and enforcement of arbitration awards in the Arab Gulf states.

While improving the arbitration laws on one hand, some Arab countries also make great efforts to set up many arbitration institutions so as to provide very convenient facilities and conditions for the conduct of arbitration. Most of the Arab countries now have arbitration and mediation institutions, such as Algerian National Commission Arbitration and Mediation Center in Algeria, Sharm el Sheikh International Arbitration Center in Egypt, Arab Intellectual Property Mediation and Arbitration Society in Jordan and Rabat International Mediation and Arbitration Center in Morocco. The Arab Gulf states also establish their own arbitration and mediation agencies, such as the Commercial Arbitration Center of the Kuwaiti Chamber of Commerce in Kuwait, the International Arbitration Center in Qatar, the Sharjah International Commercial Arbitration Center and the Abu Dhabi Commercial Mediation and Arbitration Center in the UAE.³¹ Some arbitration institutions in the Arab Gulf countries establish cooperative relationships with famous international arbitration institutions. For example, the Bahrain Chamber of Dispute Resolution was established in partnership with the American Arbitrator Association which came into operation since January 2010,³² and the Dubai International

in the Arab World, Kluwer Arbitration Blog, July 1, 2015, available at <http://arbitrationblog.kluwerarbitration.com/2015/07/01/the-evolution-of-arbitration-in-the-arab-world/>.

²⁸See the website: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html.

²⁹Nasser Ali Khasawneh, Vicky Sfeir, "Arbitration and Mediation in the Arab World: A Growing Phenomenon", available at <https://www.mediate.com/articles/AliKhasanwehN1.cfm>.

³⁰See the website: <http://www.newyorkconvention.org/member+only>.

³¹See the website: "Arbitration Institutions in Arab Countries", available at <https://www.aia-adr.com/arbitration-centers-in-arab-countries#1>.

³²See the website: <https://www.bcdr-aaa.org/>.

Financial Center set up the DIFC-LCIA Arbitration Center in cooperation with the London International Arbitration center.³³

In addition, some Arab states established regional international commercial arbitration centers through regional convention or under the sponsorship of other international organizations. On April 14, 1987, for example, 14 Arab counties, namely, Jordan, Tunisia, Algeria, Djibouti, Sudan, Syria, Iraq, Palestine, Lebanon, Libya, Morocco, Mauritania, Yemen Arab republic, and then People's Democratic Republic of Yemen, signed the Arab Convention on Commercial Arbitration, and set up the Arab Center for Commercial Arbitration in Rabat, Morocco.³⁴ In 1979, Asian-African Legal Consultative Organization (AALCO) signed an agreement with Egyptian government to establish the Cairo Regional Centre for International Commercial Arbitration, which was the first regional arbitration center in the Arab world.³⁵ According to its annual report (2009-2010), the number of cases involving Chinese parties accepted by the center is second only to those involving German parties, which indicates that many Chinese parties use the center to settle relevant civil and commercial disputes.³⁶

The increasing use of existing arbitration centers and the founding of the new centers in the Arab region shows “the growing popularity and importance arbitration”, and the similar observer noticed, “the Dubai International Arbitration Center, whose rules are UNCITRAL based, has proved to be an excellent success”, and “the Cairo Regional Center for International Commercial Arbitration, which was established in 1979, continues to be a great success”.³⁷

Most of the disputes accepted by the above mentioned arbitration institutions are commercial ones rather than investment disputes. In order to resolve the increasing investment disputes in the region, some Arab countries join the relevant regional investment dispute settlement mechanisms or set up special investment disputes settlement agencies through agreements. 15 counties, such as Egypt, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, and the UAE, have reached the Agreement for Promotion, Protection and Guarantee of Investments among Member States of the Organization of the Islamic Conference that provided the mediation and arbitration for the settlement of the investment disputes.³⁸ On November 26, 1980, the members of the League of Arab States signed the Unified Agreement for the Investment of Arab Capital in the Arab States in Amman, the capital of Jordan. According to this Agreement, the investment disputes arising from the Arab capital investment in the Arab States may be settled through mediation, arbitration, or

³³See the website:<http://www.difc-lcia.org/>.

³⁴See the website:<https://www.jus.uio.no/english/services/library/treaties/11/11-05/arab-commercial-arbitration.xml>.

³⁵See the website:<https://www.crcica.org/?AspxAutoDetectCookieSupport=1>.

³⁶See the website:https://www.crcica.org/Files/English/Annual%20Report_2016-10-31_09-06-25_0.pdf.

³⁷Nasser Ali Khasawneh, Vicky Sfeir, *Arbitration and Mediation in the Arab World: A Growing Phenomenon*, available at <https://www.mediate.com/articles/AliKhasanwehN1.cfm>.

³⁸See the website:<http://investmentpolicyhub.unctad.org/Download/TreatyFile/2399>.

through litigation in the Arab Investment Court.³⁹ All the seven Arab Gulf countries have ratified this agreement.

The most important multilateral platform for the investment dispute settlement is the International Center for Settlement of Investment Disputes (ICSID). The center has accepted a number of investment disputes involving the Arab countries. At present, among the 22 Arab countries, only Palestine are not the members of the ICSID Convention of 1965, while the other 21 Arab countries, of course including the seven Arab Gulf countries, are all members of the ICSID Convention.⁴⁰ Therefore, this makes it possible for foreign investors to settle investment disputes with Arab Gulf countries at ICSID.

According to the above analysis of arbitration and mediation settlement mechanisms of the Arab Gulf states, we can conclude that most Arab Gulf countries now have relatively modern and unified laws on arbitration and mediation, and they are all parties to the 1958 New York Convention which paved the way for the recognition and enforcement of the arbitral awards. They are also all parties to ICSID, which provides an international platform for investment dispute settlement. Additionally, the arbitration facilities in the Arab region are quite advanced and convenient for conducting arbitration. Compared with the litigation in the Arab Gulf countries, it will be optimal for the economic actors to settle their commercial and investment disputes through arbitration and mediation instead of litigation. For the future of arbitration in the Arab world, as one observer noticed, "the greater presence of Arab actors not just as respondent states, but also as claimants and investors, and hopefully in the future increasingly as arbitrators and counsel, will result in the continuing confidence of the Arab world in the system of international arbitration as mechanism for dispute resolution that is closely connected to its historical roots in the region".⁴¹

4. THE SETTLEMENT OF THE COMMERCIAL AND INVESTMENT DISPUTES BETWEEN CHINA AND THE ARAB GULF COUNTRIES: THE WAY AHEAD

With the increase of commercial and investment disputes between China and Arab countries, both sides began to pay attention to this issue. China's Policy Document towards Arab countries released in 2016 made it clear that the two sides should "create a good investment environment for the investors from both sides and protect their legal rights and interests" and "properly handle the business dispute through amicable consultation and gradually establish the

³⁹See the website:<http://investmentpolicyhub.unctad.org/Download/TreatyFile/2394>. for a general analysis of the investment dispute settlement mechanisms provided in the two agreements, see ZHU Weidong, Some Considerations on the Investment Dispute Settlement Between Chinese Investors and the Arab Countries in the BRI Context (in Chinese), *Journal of West Asia and Africa* (in Chinese), 3 (2018) 3-22.

⁴⁰See the website:<https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx>.

⁴¹Cherine Foty, "The Evolution of Arbitration in the Arab World, Kluwer Arbitration Blog", July 1, 2015, available at <http://arbitrationblog.kluwerarbitration.com/2015/07/01/the-evolution-of-arbitration-in-the-arab-world/>.

bilateral and multilateral trade disputes pre-warning and remedy mechanisms".⁴² To better handle the trade and investment disputes between China and Arab states, the China-Arab states Trade Dispute Settlement Advisory Committee was established at the second China-Arab Expo held in 2013. The establishment of such a committee is conducive for the timely resolution of the various disputes arising from the economic and trade exchanges between both sides in the spirit of fairness, good faith, mutual benefit and win-win.

At present, as for litigation between China and the Arab Gulf countries, China has only concluded the bilateral treaties on judicial assistance in civil and commercial matters with the UAE and Kuwait.⁴³ These treaties made stipulations on the ascertainment of jurisdiction in foreign-related civil and commercial litigation, service of judicial documents, taking evidence as well as the recognition and enforcement of judgments. In practice, the Intermediate People's Court of Yinchuan City in China in March 2018 issued a ruling to recognize and enforce a judgment made by the Dubai Primary Court pursuant to the provisions of the bilateral judicial assistance treaty between China and the UAE.⁴⁴ It can be seen that the number of such treaties signed by China and the Arab Gulf states is extremely limited. There is still some delay or even failure in implementing such treaties between China and the Arab Gulf states. Moreover, from the above analysis, the legal systems of the Arab Gulf countries are complicated, and the recognition and enforcement of the judgment does not go well. Therefore, litigation is not the first choice for the parties between China and the Arab Gulf countries to settle their disputes.

Both China and the Arabia Gulf counties attach great importance to the development of friendly relations between both sides and they both emphasize the settlement of disputes in the amicable way such as arbitration and mediation in their historical tradition and legal culture. There is the arbitration-friendly environment in China and the Arab Gulf countries with the advanced arbitration system and modern arbitration facilities, and their membership in the New York Convention can ensure the smooth recognition and enforcement of their arbitral awards. Hence it is submitted that the parties give priority to settle the commercial and investment disputes in the amicable way such as mediation and arbitration. China and Arab countries have made great efforts in this regard. On September 10, 2015, the China-Arab Commercial Mediation Center was jointly established by the Commercial Legal Service Center of China Council for the Promotion of International Trade, the Lebanon Mediation Center, the Amman Chamber of Commerce and the Cairo Regional Centre for International Commercial Arbitration. The establishment of the center aims to create a sound legal environment for China-Arab business cooperation. The Mediation Centers of the two sides can take their own

⁴²See the website:http://www.gov.cn/xinwen/2016-01/13/content_5032647.htm.

⁴³See the website:https://www.fmprc.gov.cn/web/ziliao_674904/tytj_674911/wgdwdjdsfhzty_674917/t1215630.shtml.

⁴⁴The ruling can be found at <http://openlaw.cn/judgement/7c25f34601cc46f8895a77fd1e18209e?keyword=%E9%98%BF%E8%81%94%E9%85%8B%E6%B3%95%E9%99%A2%E5%88%A4%E5%86%B3%E6%89%BF%E8%AE%A4>.

advantages to facilitate the parties involved to resolve disputes through mediation when business disputes arise.⁴⁵

For the settlement of investment disputes between China and the Arab countries, it is first necessary to learn about the bilateral investment treaties (hereinafter referred to as BITs) concluded between both sides. Based on the analysis of the cases accepted by the International Center for Settlement of Investment Disputes (ICSID), most of the cases are filed in light of the provisions of the BITs. At present, China has concluded BITs with 14 Arab counties, namely, Sudan, Egypt, Algeria, Oman, Lebanon, Syria, Qatar, Saudi Arabia, Bahrain, Kuwait, UAE, Morocco, Tunisia, Yemen, six of which are the Arab Gulf countries.⁴⁶ These BITs provide that the investment disputes may be settled through amicable consultation, litigation in the domestic courts of the host states, and ad hoc arbitration or ICISD arbitration.

According to the above analysis, it is better to settle the investment disputes between the Chinese investors and Arabia Gulf countries first through amicable negotiation. In case of failure, arbitration shall be alternative as far as possible. When choosing arbitration, the parties should first consider filing their claim at ICISD. If such procedure is not available, the parties may choose those arbitration institutions with prestigious reputation in the Arab region, eg, the DIFC-LCIA Arbitration Center and the Cairo Regional Centre for International Commercial Arbitration. In addition, when selecting arbitration, the parties involved should consider whether the country where the arbitration is to take place and the host country against whom the claim is filed are parties to the New York Convention or not, otherwise, it will be problematic for the enforcement of the arbitral awards in future. In a word, a variety of relevant factors should be taken into account when choosing dispute settlement mechanisms.

For the future, considering the importance of arbitration in settling commercial and investment disputes between the parties from China and the Arab Gulf countries, the arbitral institutions from both sides may mutually appoint arbitrators from both sides to sit in each other's arbitral institutions to attract the parties from both sides to arbitrate in the arbitral institutions, and they may also consider setting up China-Arab Gulf States Joint Arbitration Centers to provide arbitration services to the parties from both sides, just as the establishment of the China-Africa Joint Arbitration Centers to provide arbitration services for China-African business disputes. So far, the arbitral institutions from China and South Africa, Kenya have set up China-Africa Arbitration Centers in Shanghai, Shenzhen, Beijing, Johannesburg and Nairobi, respectively.

5. CONCLUSION

As can be seen from the above analysis, with the implementation of the BRI, the business transactions between China and the Arab Gulf states will be on the increase. For the sustainable

⁴⁵See the website:<http://nx.people.com.cn/n/2015/0910/c192493-26323145.html>.

⁴⁶See the website:<http://tfs.mofcom.gov.cn/article/Nocategory/201111/20111107819474.shtml>.

development of such business transactions, a comprehensive and sound dispute settlement mechanism should be established to provide guarantees to the economic actors involved. At present, it is better to make resort to arbitration and mediation to settle such disputes instead of litigation in the domestic courts of the Arab Gulf countries based on the examination of the existing legal frameworks in the region. When the parties choose to arbitrate their disputes in the Arab Gulf countries, they'd better choose to arbitrate in the prestigious arbitral institutions in the region, such as the DIFC-LCIA Arbitration Center. Additionally, there are some other elements to be taken into account when arbitrating in the Arab Gulf countries, eg, whether the country in which the arbitration takes place adopted the UNCITRAL Model Law on International Commercial Arbitration or not and whether it ratified the New York Convention or not. For the long run, the arbitral institutions from China and the Arab Gulf countries may consider mutually appointing the arbitrators from both sides to sit in each other's arbitral institutions and setting up the joint arbitration centers, drawing lessons from the dispute settlement between China and Africa.